

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA)

V.)

JOHNATHON IRISH)

DOCKET NO. 19-CR-251-LM

**ATTORNEY BENJAMIN L. FALKNER'S MOTION TO WITHDRAW
APPEARANCE AND FOR THE APPOINTMENT OF APPELLATE COUNSEL**

Attorneys Benjamin L. Falkner hereby moves this Court, pursuant to L.Cr.R. 44.3, (1) for leave to withdraw his appearance on behalf of Defendant Johnathon Irish and (2) for the Court to appoint substitute counsel. Attorney Falkner relies upon the following:

1. Attorney Falkner represented Mr. Irish at the proceedings up to and including trial.

2. On February 12, 2020, the jury rendered a verdict of guilty.

3. Since the jury entered its verdict a potential conflict of interest has arisen. In Attorney Falkner's opinion, the nature of the potential conflict is such that the appointment of successor counsel would best insure effective representation of Mr. Irish at any post-verdict proceedings, including sentencing.

4. In particular, Mr. Irish has informed Attorney Falkner that he intends to file, within 14 days of the verdict, a pro se motion for new trial alleging ineffective assistance of counsel. Due to the nature of the expected claim of ineffective assistance of counsel, a prompt hearing on that motion, to occur while

the events undergirding the claim of ineffective assistance of counsel remains fresh in Mr. Irish's mind and in Attorney Falkner's mind, may best insure that any such claims are determined based upon an as accurate a record as possible.

5. Mr. Irish has informed Attorney Falkner that he wishes for Attorney Falkner to withdraw his appearance and for the appointment of successor counsel.

6. Although the United States Court of Appeals for the First Circuit has "held that 'there is no invariable model for a trial court's inquiry into an allegedly embattled attorney-client relationship,' [the Court of Appeals has] consistently required some 'probe into the nature and duration of the asserted conflict.'" *United States v. Diaz-Rodriguez*, 745 F.3d 586, 590 (1st Cir. 2014), *quoting United States v. Myers*, 294 F.3d 203, 207 (1st Cir. 2002). The "duty to inquire applies with equal force whether the counsel at issue is appointed or retained." *Diaz-Rodriguez*, 745 F.3d at 591.

7. Undersigned counsel hereby certifies, pursuant to L.R. 7.1(c), that a good faith attempt has been made to obtain concurrence in the relief sought. The Government has indicated that it takes no position with regard to the relief sought herein.

8. Undersigned counsel hereby requests a hearing, pursuant to L.R. 7.1(d), so that the Court may "probe into the nature of and duration of the asserted conflict," as required under *Diaz-Rodriguez, supra*, 745 F.3d at 590.

WHEREFORE, Attorney Benjamin L. Falkner respectfully requests that this Court GRANT the within motion and (1) GRANT LEAVE to Attorney Falkner

to withdraw his appearance on behalf of Defendant Johnathon Irish and
(2) APPOINT substitute counsel on Mr. Irish's behalf.

/s/ Benjamin L. Falkner
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Dated: February 20, 2020

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the within document upon the attorney of record for each other party via the Court's ecf system on February 20, 2020 and a copy to Defendant Johnathon Irish via first class mail, postage prepaid on February 20, 2020.

/s/ Benjamin L. Falkner
Benjamin L. Falkner